

HOUSE BILL 1334

By Briley

AN ACT to amend Tennessee Code Annotated, Title 29,
Chapter 26, relative to enact the Sorry Works!
Pilot Program Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Sorry Works! Pilot Program Act".

SECTION 2. The Sorry Works! Pilot program is hereby established. During the first year of the program's operation, participation in the program shall be open to two (2) hospitals, one (1) not-for-profit and one (1) for-profit, and two (2) nursing homes, one (1) not-for-profit and one (1) for-profit. A hospital may participate only with the approval of the hospital administration and the hospital's organized medical staff. Under the program, participating hospitals and physicians shall promptly disclose and identify, acknowledge and apologize for mistakes in patient care and promptly offer fair settlements.

SECTION 3. Participating providers shall encourage patients and families to retain their own legal counsel to ensure that their rights are protected and to help facilitate negotiations for fair settlements.

SECTION 4. All program participants shall:

(1) Designate a patient safety officer to ensure that the conditions of participation established in this subsection are met;

(2) Submit a comprehensive plan, as part of the application for participation in the program, to reduce the incidence of medical errors and improve patient safety;

(3) Allocate an amount equal to not less than fifty percent (50%) of the projected annual savings for the first year of participation in the program, not less than forty percent (40%) of the actual savings reported for the second year, and not less than thirty

percent (30%) of the actual savings reported for the third and each subsequent year of participation to:

(A) The reduction of medical liability premiums for doctors or other designated health care providers; and

(B) Activities that result in the reduction of medical errors or that otherwise improve patient safety;

(4) Require health care facilities or providers included in the program to submit to the patient safety officer a report of:

(A) Any incident or occurrence involving a patient that is thought to either be a medical error or patient safety event; and

(B) Any legal action related to the medical liability of a health care facility or provider;

(5) Ensure that reports filed under subdivision (4) are submitted to the database in a standardized format as designated by the commissioner;

(6) Ensure that a root cause analysis of any report submitted to the patient safety officer pursuant to subdivision (4) is performed within ninety (90) days after the report is submitted;

(7) If a patient was harmed or injured as the result of a medical error or as a result of the relevant standard of care not being followed, ensure that the report of the incident or occurrence prepared pursuant to subdivision (4)(A) is disclosed to the patient not later than five (5) business days after the completion of the root cause analysis under subdivision (6);

(8) Disclose information contained in any report submitted to the patient safety officer pursuant to subdivision (4) upon request from the patient who was the subject of the report;

(9) At the time of disclosure to a patient pursuant to subdivision (7), offer to:

(A) Negotiate compensation with the patient involved in accordance with subdivision (5);

(B) Provide, at the discretion of the health care facility or provider involved, an apology or expression of regret; and

(C) Share, where practicable, any efforts the health care facility or provider will undertake to prevent reoccurrence; and

(10) Prepare and submit entries to the database as required by the commissioner in accordance with subdivision (5).

SECTION 5. If a patient elects to negotiate compensation with a program participant pursuant to Section 4 (9), the following rules shall apply:

(1) The negotiation proceedings shall be confidential;

(2) Any apology or expression of regret by a doctor or other designated health care facility or provider shall be kept confidential and shall be inadmissible in any civil action;

(3) The program participant shall provide to the patient written notification of the patient's right to legal counsel. The notification shall include an affirmative declaration that no action was taken to dissuade a patient from using counsel for the negotiations;

(4) Both parties may agree to the use of a neutral third party mediator to facilitate the negotiation; and

(5) The parties shall agree that if an agreement on the terms of compensation is not reached within six (6) months from the date of the disclosure required to the patient under of Section 4 (7):

(A) The patient may proceed directly to the judicial system for a resolution of the issues involved; or

(B) The parties may sign an extension of the agreement to provide an analysis under Section 4 (7). During the period of any extension agreed to by the

parties, any statute of limitation or statute of repose shall be tolled for a period of time equal to the length of the extension, and the patient shall be entitled to commence any action with respect to the issues involved within that time following the termination of the extension at its expiration.

SECTION 6. The commissioner of health shall establish a patient safety database. The database shall adopt standardized patient safety taxonomy in consultation with the joint commission on accreditation of the health care organizations and other entities with relevant expertise.

SECTION 7. Participating providers shall report to the committee their total costs for healing art malpractice verdicts, settlements, and defense litigation for the preceding five (5) years to enable the committee to determine average costs for that provider during that period. The committee shall develop standards and protocols to compare costs for cases handled by traditional means and cases handled under the Sorry Works! protocol. If the committee determines that the total costs of cases handled under the Sorry Works! protocol by a provider participating in the program exceed the total costs that would have been incurred if the cases had been handled by traditional means, the provider may apply for a grant from the Sorry Works! fund, a special fund that is created in the state treasury, for an amount, as determined by the committee, by which the total costs exceed the total costs that would have been incurred if the cases had been handled by traditional means; however, the total of all grants from the fund for cases in any single participating provider in any year may not exceed the amount in the fund or two million dollars (\$2,000,000), whichever is less. All grants shall be subject to appropriation. Moneys in the fund shall consist of funds transferred into the fund from medical subrogation moneys accruing to the state.

SECTION 8.

(a) A committee is established to develop, oversee, and implement the Sorry Works! pilot program. The committee shall have twelve (12) members, each of whom

shall be a voting member. Seven (7) members of the committee shall constitute a quorum. The committee shall be comprised as follows:

- (1) One (1) representative of the department of commerce and insurance;
- (2) One (1) representative of the comptroller of the treasury;
- (3) Two (2) representatives of the Tennessee Medical Association;
- (4) Two (2) representatives of the Tennessee Trial Lawyers Association;
- (5) Two (2) representatives of the Tennessee Hospital Association;
- (6) Two (2) representatives of the Tennessee Bar Association; and
- (7) Two (2) actuarial experts chosen by the commissioner of commerce and insurance.

(b) The committee shall establish criteria for the program, including but not limited to selection of providers, physicians, and insurers to participate in the program and creation of a subcommittee to review cases from hospitals and determine whether providers, physicians, and insurers are entitled to compensation under the program.

(c) The committee shall communicate with providers, physicians, and insurers that are interested in participating in the program. The committee shall make final decisions as to which applicants are accepted for the program.

(d) The committee shall report to the governor and the general assembly annually.

(e) The committee shall publish data regarding the program.

(f) Committee members shall receive no compensation for the performance of their duties as members, but each member shall be paid necessary expenses while engaged in the performance of those duties.

SECTION 9.

(a) The program may be terminated at any time if the committee, by a vote of two-thirds (2/3) of its members, votes to terminate the program.

(b) If the program is not terminated under subsection (a), the program shall terminate after its seventh year of operation.

SECTION 10. This act shall take effect July 1, 2007, the public welfare requiring it.